

Texas Department of Banking

1D#13946

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October 15, 1991

RTQ-242

VIA TELEFAX

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Opinion Committee

ATTN: Opinions Committee

The Honorable Dan Morales
Texas Attorney General
P.O. Box 14548 Capital Station
Austin, Texas 78711

Re: Request for an Opinion regarding Article 342-104 of the
Texas Banking Code, "Finance Commission - Qualifications
of Members."

Dear General Morales:

I hereby request an Opinion from the Attorney General on the
above captioned matter. The relevant portions of the statute
are given below, followed by the fact situation which gives
rise to this request.

Section 1 of Article 342-104 provides that: "Two (2) members
of the Finance Commission shall be banking executives. For
the purposes of this article, a banking executive is a person
who has had (5) years or more executive experience in the
seven (7) years next preceding the person's appointment in a
Federal or State bank in a capacity not lower than cashier and
who, at the time of the person's appointment, is an officer in
a State bank."

Section 3 of Article 342-104 provides that "Experience as
Banking Commissioner, Deputy Banking Commissioner, Department
Examiner or Examiner shall be deemed executive banking
experience,... within the meaning of this article."

Section 4 of Article 342-104 provides that "The members of the
Finance Commission who are not banking executives... shall be
selected by the Governor on the basis of recognized business
ability. Those members may not be banking executives,... or
controlling shareholders in a bank..."

One of the members of the Finance Commission appointed under
Section 4 of Article 342-104 is considering employment as a
Chief Executive Officer in a State bank. This member does not
have sufficient banking or state regulatory experience to be a
member of the State Finance Commission under either Section 1
or 3 of Article 342-104. Please provide an opinion as to

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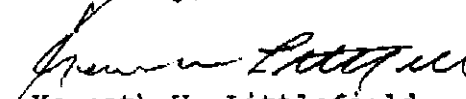
whether this member may continue to serve on the State Finance Commission.

Your prompt attention to this matter is greatly appreciated. I do not take a position on this matter, but would like to avoid challenges to actions taken by the State Finance Commission.

It appears that the Attorney General has issued an Opinion in the recent past interpreting a similar statute regarding Commissioners serving on the Texas Water Commission, and that Opinion would perhaps form the basis for a decision in this matter.

Thank you for your kind assistance in this matter. I will take appropriate action in regard to this matter upon receiving your decision.

Sincerely,


Kenneth W. Littlefield
Commissioner

KWL/jlm

c: Ann Graham, General Counsel